

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>HALLMARK INSURANCE COMPANY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>GAIL HOEFERT and AARON HOEFERT, as Personal Representatives of THE ESTATE OF ANDREW JOSEPH HOEFERT; GAIL HOEFERT and KERRY HOEFERT, as Legal Guardians of B.E.H. (minor) and C.T.H. (minor); KEVIN TYCZ, as Personal Representative of THE ESTATE OF JENNIFER CHRISTINE HOEFERT; ERIC J. LUPKES; LOGAN HEALTH, d/b/a LOGAN HEALTH MEDICAL CENTER; PARNTERS UNITED FOR LIFE SAVING EDUCATION, d/b/a JEFFERSON VALLEY EMS & RESCUE; SCL HEALTH MEDICAL GROUP – BUTTE, LLC; DE SMET INSURANCE COMPANY OF SOUTH DAKOTA; and FEDEX CORPORATION,</p> <p>Defendants.</p>	<p>4:22-CV-4069</p> <p>ANSWER TO CROSSCLAIM OF DE SMET INSURANCE COMPANY OF SOUTH DAKOTA</p>
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COME NOW the above-named Defendants, Gail Hoefert and Aaron Hoefert, as Personal Representatives of The Estate of Andrew Joseph Hoefert; Gail Hoefert and Kerry Hoefert, as Legal Guardians of B.E.H. (minor) and C.T.H. (minor); and Kevin Tycz, as Personal Representative of The Estate of Jennifer Christine Hoefert (hereinafter referred to as “these Defendants”), by and through their attorney of record, Dennis Duncan, and for their Answers to the Crossclaim of De Smet Insurance Company of South Dakota (Crossclaimant), state and allege as follows:

1.

That these Defendants admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, and 6 of the Crossclaimant's Crossclaim.

2.

That these Defendants further admit that Abbigail Vitek was a resident of Minnehaha County, South Dakota at the time of her death.

3.

That these Defendants, upon information and belief, admit that portion of Paragraph 7 of the Crossclaim with respect to the allegations relating to Eric Lupkes being the biological father of Abbigail Vitek and his residence being in Minnehaha County, South Dakota.

4.

That these Defendants admit Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Crossclaim.

5.

That these Defendants admit medical services were provided to the minor children of Andrew and Jennifer Hoefert by various providers, including those referenced in Paragraphs 18, 19 and 20 of the Crossclaim and as a result those providers have or may in the future assert a statutory lien for their services.

6.

That, in regard to this Crossclaim asserted against these Defendants, these Defendants deny Paragraph 22 of the Crossclaim alleging the Crossclaimant is entitled to a reduction of the amount to be paid under the Crossclaimant's policy of insurance for the liability insurance limit of the Hallmark Insurance policy.

7.

That these Defendants allege Andrew and Jennifer Hoefert were insured under insurance coverage provided for three (3) separate vehicles by De Smet and paid a separate premium for the insurance coverage for each vehicle. Therefore, circumstances may exist which would permit the Estates of the decedents to seek the aggregate limits of the three (3) separate policies covering three (3) separate vehicles issued by De Smet.

8.

Based upon the allegations of Paragraph 7 above, these Defendants deny the full amount of the De Smet underinsured motorist coverage is in all circumstances limited to the sum of \$450,000.00 resulting from the death of Andrew Hoefert and Jennifer Hoefert but will not resist the deposit of the amount of \$450,000.00 into the Court.

9.

The Personal Representatives of the Estates of Andrew and Jennifer Hoefert are without sufficient knowledge to admit or deny the allegations of Paragraph 25, and again deny \$450,000.00 may be, under all circumstances, the full extent of underinsured coverage under the De Smet policy of insurance.

10.

That these Defendants assert at the current time it has been determined by the legal guardians of B.E.H. or C.T.H. to assert no claim for the bodily injuries incurred the minor children B.E.H. or C.T.H. as a result of the collision.

11.

That these Defendants admit Defendant De Smet Insurance Company of South Dakota is entitled to bring this action for Interpleader and the Court can adjudicate the rights and responsibilities of the parties and apportion the full amount of the underinsured

motorist coverage available under the De Smet policy of insurance and fully discharge De Smet from further liability.

WHEREFORE, these Defendants respectfully request:

1.

That the Court entertain this Crossclaim and adjudicate the rights and responsibilities of the parties and apportion the full amount of coverage available under the De Smet underinsured motorist coverage policy.

2.

That the Court enter an Order distributing all interpleaded funds in a just and equitable manner.

3.

That the Court not fully and finally discharge De Smet from all further liability in connection with the wrongful deaths of Aaron Hoefert and Jennifer Hoefert until the Estates of the above decedents waive their right to seek the aggregate limits of the three (3) separate policies of the underinsured motorist coverage from De Smet or the Court enters an Order adversely adjudicating that issue to the Estates of the decedents.

4.

That the Court grant the Estates of Andrew Hoefert and Jennifer Hoefert such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted this 2nd day of August, 2022.

/s/ Dennis Duncan
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Hoefert, as Legal Guardians of B.E.H. (minor)
and C.T.H. (minor); Kevin Tycz, as Personal
Representative of The Estate of Jennifer
Christine Hoefert*

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing Answer to Crossclaim of De Smet Insurance Company of South Dakota was electronically filed with this Court via the ECF system and served electronically upon the following:

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and was served upon the following via the United States Postal Service, first-class mail, postage prepaid:

Eric Lupkes
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Partners United for Life Saving Education

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Denise Bausch (Registered Agent)
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Dated this 2nd day of August, 2022.

/s/ Dennis Duncan
Dennis Duncan